

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Performance Measurements and Standards for)	
Unbundled Network Elements and)	CC Docket No. 01-318
Interconnection)	
)	
Performance Measurements and Reporting)	
Requirements for Operations Support)	CC Docket No. 98-56
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering)	
Advanced Telecommunications Capability)	CC Docket No. 98-147
)	
Petition of Association for Local)	
Telecommunications Services for Declaratory)	CC Docket Nos. 98-147, 96-98, 98-141
Ruling)	
)	
Performance Measurements and Standards for)	
Interstate Special Access Services)	CC Docket No. 01-321
)	
Petition of U S West, Inc., for a Declaratory)	
Ruling Preempting State Commission)	CC Docket No. 00-51
Proceedings to Regulate U S West's Provision)	
of Federally Tariffed Interstate Services)	
)	
Implementation of the Non-Accounting)	
Safeguards of Sections 271 and 272 of the)	CC Docket No. 96-149
Communications Act of 1934, as amended)	
)	
2000 Biennial Regulatory Review -)	
Telecommunications Service Quality)	CC Docket No. 00-229
Reporting Requirements)	
)	
AT&T Corp. Petition to Establish)	
Performance Standards, Reporting)	
Requirements, and Self-Executing Remedies)	RM 10329
Need to Ensure Compliance by ILECs with)	
Their Statutory Obligations Regarding Special)	
Access Services)	

**REPLY COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its reply comments in response to the Notices of Proposed Rulemaking in the Commission’s performance standard-setting proceedings relating to Unbundled Network Elements (“UNEs”) and Interconnection¹ and Special Access Services² (hereinafter collectively, the “Notices”).

I. INTRODUCTION

The record in this proceeding demonstrates that the Commission should not adopt federal performance measurements for UNEs and special access services that apply to small and midsize incumbent local exchange carriers (“ILECs”). It is unreasonable and impracticable to develop a national standard that is appropriate for all ILECs, regardless of size. Furthermore, the record confirms that the burdens that performance standards would place on midsize and small ILECs would far outweigh any benefits these standards might generate. In both the UNE and the special access services proceedings, therefore, the Commission should promote the deregulatory goals of the Act by declining to apply any federal performance standards to midsize and small ILECs.

II. A “ONE SIZE FITS ALL” APPROACH TO NATIONAL PERFORMANCE STANDARDS IS UNREASONABLE.

¹ *Performance Measurements and Standards for Unbundled Network Elements and Interconnection, et al.*, CC Docket No. 01-318, Notice of Proposed Rulemaking, FCC 01-331 (rel. Nov. 19, 2001) (“*UNE Notice*”).

² *Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket No. 01-321, Notice of Proposed Rulemaking, FCC 01-339 (rel. Nov. 19, 2001) (“*Special Access Notice*”).

As is vividly illustrated in the record, no single set of performance standards, either for UNE or special access provisioning, can possibly reflect the diverse circumstances of all ILECs and CLECs across the country. The comments in this proceeding support the Commission's sense that significant differences in ILEC size, density and market characteristics should be a consideration in implementing these standards.³ This is a position reflected by larger and smaller companies alike. For example, ITTA strongly agrees with SBC's assertion in its comments in the UNE Notice that "a 'one size fits all' national performance standard could not possibly take into account all the myriad differences in incumbent LEC networks and systems."⁴ As cited by SBC, there are substantial variations and factors that have a significant impact on network capabilities and performance. SBC is correct in concluding that national standards would be either too lax or too strict, depending on the type of ILEC to which they are applied.

As ITTA explained in its comments, many midsize and small carriers simply do not process the volume of UNE or special access orders to justify the expense that providing competitors with electronic access to its ordering systems would entail. Several CLECs agree that this difference alone means that the Commission should forego national performance standards for small and midsize ILECs.⁵ The 3CLECs, for instance, recognize that imposing performance standards designed to apply to a large ILEC having access to the latest technology and the capital to utilize it would be inappropriate for small and midsize ILECs and, in fact, agree that "with so many manual ordering and provisioning processes, many of the proposed Commission measures such as OSS Pre-order Interface Response Timeliness would be completely meaningless for smaller

³ UNE Notice at para. 24; Special Access Notice at para. 15.

⁴ SBC Communications, Inc. ("SBC") Comments to UNE Notice at 33.

⁵ TDS METROCOM, Inc., USLINK, Inc., Madison River Communications ("3CLECs") Comments to UNE Notice at 5-6; Time Warner Telecom and XO Communications, Inc. Comments to Special Access Notice at para. at 29; Allegiance Telecom, Inc. Comments to UNE Notice at 36; Metropolitan Telecommunications Corporation ("MetTel") Comments to Special Access Notice at 2.

ILECs.”⁶ As further explained by Metropolitan Telecommunications Corporation (“MetTel”), “the same set of metrics cannot effectively cover both manually and electronically input transactions.”⁷ Reflecting these differences, states have adopted varying performance requirements,⁸ but none has actually applied these requirements to midsize or small ILECs.⁹ For example, the California Public Utilities Commission (“CPUC”) states that it “believes that performance standards and measures must apply to all incumbent LECs.”¹⁰ Their actions, however, speak louder than their words. The Commission in fact only imposed this type of measurement on Pacific Bell and GTE-California (now Verizon).¹¹ CPUC’s comment agreed, however, “that it may be appropriate to tailor the requirements for ILECs serving rural areas to reduce any undue burden on these carriers.”¹²

Similarly, Frontier Telephone of Rochester, Inc. explains that it could not simply adopt Verizon-New York’s measures due to the difference in the systems, data and processes.¹³ Frontier asserts that “[b]ecause of the wide variations among ILECs in their systems, data and

⁶ 3CLECs Comments to UNE Notice at 6.

⁷ MetTel Comments to Special Access Notice at 2.

⁸ For instance, California has 44 metrics, while Ohio has over 100. California Public Utilities Commission Comments to UNE Notice at 8-9; Public Utilities Commission of Ohio Comments to UNE Notice, Attachments A, B.

⁹ See Public Utilities Commission of Ohio Comments to UNE Notice; California Public Utilities Commission Comments to UNE Notice; Oklahoma Corporation Commission Comments to UNE Notice; Public Utility Commission of Texas Comments to UNE Notice and Special Access Notice; Virginia State Corporation Commission Comments to UNE Notice; Missouri Public Service Commission Comments to UNE Notice; New York State Department of Public Service Comments to UNE Notice and Comments to Special Access Notice; Colorado Public Utilities Commission Comments to UNE Notice; Minnesota Department of Commerce Comments to UNE Notice and Comments to Special Access Notice; Illinois Commerce Commission Comments to Special Access Notice.

¹⁰ California Public Utilities Commission Comments to UNE Notice at 6.

¹¹ Before the Public Utilities Commission of the State of California (“CPUC”) filed October 9, 1997, R.97-10-016, -017 at 1. CPUC noted that “in a future set of comments, parties will have the opportunity to address the need for performance measures and standards for Citizens and Roseville telephone companies.” *Id.* at 2. It has been 4 ½ years since that proceeding and California has not yet applied performance measures to these telephone companies.

¹² California Public Utilities Commission Comments to UNE Notice at 6.

¹³ Frontier and Citizens Comments to UNE Notice at 3.

processes, a ‘one size fits all’ plan would be costly to the point of confiscation, because it would require a reworking not only of the ILECs’ information technology systems but also of their underlying business processes.”¹⁴

ITTA therefore urges the Commission to recognize, in particular, the fact that small and midsize ILECs do not have the network resources to conform to national performance standards that are generally designed for larger carriers. Indeed, as SBC acknowledges, even if such national standards were established, “some incumbent LECs could never meet [them] given the capabilities of their networks and systems.”¹⁵ ITTA concurs that, at a minimum, the compliance burden that national standards designed for the nation’s largest carriers would place on midsize and small carriers would be extreme.

Commenters that request that national performance standards be imposed uniformly on all ILECs are misguided.¹⁶ These commenters incorrectly assume that all ILECs are already tracking and providing this type of data and that the burdens of reporting are insignificant.¹⁷ In reality, most of the detailed performance measurements and reporting requirements that currently exist were developed for the large carriers in the course of 271 reviews or as a condition of their merger agreements.¹⁸ Therefore, the application of the performance measurements to all ILECs, as

¹⁴ *Id* at 4.

¹⁵ SBC Comments to UNE Notice at 33.

¹⁶ Cablevision Lightpath, Inc. Comments to Special Access Notice at 5; Association for Local Telecommunications Services (“ALTS”) Comments to Special Access Notice at 6-7; Cable & Wireless USA, Inc. Comments to Special Access Notice at 13; XO Communications Inc. Comments to UNE Notice at 4-5; California Public Utilities Commission Comments to UNE Notice at 6.

¹⁷ *See, e.g.*, XO Communications, Inc. Comments to UNE Notice at 12; ALTS Comments to UNE Notice at 7; ALTS Comments to Special Access Notice at 9; McLeodUSA Telecommunications Services, Inc. Comments to UNE Notice at 9.

¹⁸ Cincinnati Bell Telephone Company (“Cincinnati Bell”) Comments to UNE Notice at 2.

these commenters propose, would substantially increase the burdens on the small and midsize carriers, which are not currently subject to such measurements and reporting requirements.¹⁹

III. IN BOTH THE UNE AND SPECIAL ACCESS SERVICES PROCEEDINGS, THE COMMISSION SHOULD PROMOTE THE DEREGULATORY GOALS OF THE ACT AND THE COMMISSION.

A majority of commissioners have espoused regulatory simplification as a pro-competitive goal.²⁰ Contrary to this deregulatory intent, however, the proposals in the Notices for new measurements and reporting requirements are overzealous, and contrary to the regulatory simplification goals of the Act and this Commission. Federal standards overlaid upon the existing state standards would simply add another layer to the regulatory burden, and would neither simplify nor deregulate.²¹ The CLECs and the states urge the Commission to use state measures as a “baseline.”²² The states emphasize that they already have standards in place that they do not wish to see disrupted;²³ however, they do not explain why additional federal standards are needed.

One meaningful step that the Commission could take toward its deregulatory goals would be to refrain from subjecting small and midsize ILECs to national UNE or special access performance standards. Midsize and smaller ILECs serve smaller and less lucrative markets than

¹⁹ *Id.*

²⁰ *See, e.g.*, Separate Statement of Commissioner Michael K. Powell re: Petition for Forbearance of the Independent Telephone and Telecommunications Alliance (AAD File NO. 98-43), and related proceedings (CC Docket No. 97-11, CC Docket No. 98-81, CC Docket No. 96-150, CC Docket No. 98-117, WT Docket No. 96-162, CC Docket No. 96-149, CC Docket No. 96-61); Speech by Kathleen Q. Abernathy, *My View of the FCC's Public Interest Obligation*, PLI Conference Remarks (Dec. 13, 2001); Speech by Kevin J. Martin, *Framework for Broadband Deployment*, National Summit on Broadband Deployment (Oct. 26, 2001).

²¹ SBC Comments to UNE Notice at 9.

²² Allegiance Telecom, Inc. Comments to UNE Notice at 7; Conversent Communications, LLC Comments to UNE Notice at 4; McLeodUSA Telecommunications Services, Inc. Comments to UNE Notice at 6; Public Utilities Commission of Ohio Comments to UNE Notice at 10-11; California Public Utilities Commission Comments to UNE Notice at 4; Minnesota Department of Commerce Comments to UNE Notice at 2; Public Utilities Commission of the State of Colorado Comments to UNE Notice at 4.

²³ *See, e.g.*, Public Utilities Commission of Ohio Comments to UNE Notice at 4-5; California Public Utilities Commission Comments to UNE Notice at 3; Minnesota Department of Commerce Comments to UNE Notice at 2; Public Utilities Commission of the State of Colorado Comments to UNE Notice 5.

their larger brethren, and in many cases, section 251(f) exempts them from the unbundling requirements of the Act altogether.²⁴ Therefore, by declining to impose performance standards on these carriers, the Commission would have a minimal impact on the overall quality of provisioning of UNEs and special access services. These ILECs face limited demand for UNEs and special access services and there is no evidence of any systemic problem with small and mid-size ILECs provisioning of UNEs or special access services. Furthermore, at least with respect to midsize and small ILECs, marketplace negotiations adequately govern the quality of services provided by these carriers.²⁵ In fact, because small and midsize ILECs receive so few requests for UNEs, these carriers may be able to process the CLECs requests more quickly than the larger carriers.

Small and midsize ILECs that are not already subject to performance measurements mandated by state or federal regulators should not be subject to any new requirements that the Commission may develop in this proceeding.²⁶ The fact that states have generally not seen sufficient evidence of service quality problems to warrant applying measurements and standards to the smaller ILECs should signal that there is no need to extend any national requirements to these carriers. Moreover, as a practical matter, a small or midsize carrier may not have enough UNE requests to generate meaningful statistics. As Cincinnati Bell demonstrates in its comments, the complex statistical tests necessary to normalize the small sample sizes require a disproportionately great amount of expertise and resources. Any costs of developing such measurement and reporting systems for CLEC orders could be significant on a per UNE or per CLEC basis because these

²⁴ Cincinnati Bell Comments to UNE Notice at 3.

²⁵ The Commission should expressly recognize the continued right of individual ILECs and CLECs to negotiate standards under Section 252. ILECs and CLECs, in conjunction with state commissions, can negotiate such standards on a case-by-case basis and determine the appropriate performance standards. *See* 3CLECs Comments to UNE Notice at 6.

²⁶ Cincinnati Bell Comments to UNE Notice at 3.

carriers lack the economies of scale enjoyed by the larger carriers.²⁷ Performance measurements applied to these carriers would produce unreliable results that are ineffective in determining the quality of service provided by small and midsize carriers.²⁸ Therefore, the Commission should not apply any standards at all to these carriers.

IV. CONCLUSION

ITTA urges the Commission in these reply comments not to impose national performance standards for UNEs and for special access services on small and midsize ILECs. The record in these proceedings demonstrates that a “one size fits all” approach will not achieve the Commission’s deregulatory goals. Requiring these carriers to adhere to national performance standards is unwarranted given the satisfactory service record of small and midsize ILECs, their low volume of orders, and the high cost burdens these standards would impose.

Respectfully submitted,

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²⁷ Cincinnati Bell Comments to UNE Notice at 4.

²⁸ Disaggregation reduces the sample size for each individual measurement which, as the Commission has noted, renders the resulting performance data not as reliable an indicator of compliance with statutory requirements. *See Verizon Communications Inc. Comments to UNE Notice at 16, citing Joint Application by SBC Communications Inc., et al, for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6254 (2001).

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